DIGEST
OF
SELECTED DECISIONS & ORDERS
OF THE
D.C. RENTAL HOUSING COMMISSION

PREPARED BY
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UNDER THE OVERSIGHT OF
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OFFICE OF ADJUDICATION
D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Issued May 23, 2002

AUGUST 2002 SUPPLEMENT
TO
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ACKNOWLEDGEMENTS

Special thanks are given to Ms. Melaney D. Garner for bringing to bear her excellent administrative, computer and word processing skills, all of, which allowed this project to proceed and be completed in an efficient and well-organized manner.

Thanks are also given to the OAD Hearing Officers for taking the time out of their extremely busy work schedules to provide thoughtful editorial input and quality recommended revisions to this digest.

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PREFACE

COVERAGE

This digest covers the volumes of the D.C. Rental Housing Commission Decisions & Orders ("D & O" or "Decisions and Orders") set forth below.

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27 D&O	July – August 1999
28 D&O	September 1999
29 D&O	October – December 1999
30 D&O	January 2000
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33 D&O	July – September 2000
34 D&O	October – December 2000
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36 D&O	July – December 2001
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38 D&O	April – June 2002

CITATION

The page referenced in the D & O citation in this digest is to the number of the *volume* page in the D & O and not to the *original* page number in the decision and order or order.

SUBJECT HEADINGS

Set forth below are the subject headings used in this digest. These subject headings and the related digest material may be found behind the numbered tab with the same number set forth below before the heading.

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59. SUBPOENA
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61. VOLUNTARY AGREEMENTS

APPEAL RECORD

The contents of the record on appeal is set forth in the regulation (14 DCMR 3804.3). 26 D&O 87, n.20

All hearing tapes of the record must be certified to RHD otherwise record is incomplete unless parties agree to a lesser portion. 33 D&O 205, 206

Record is incomplete when tape is blank and there is no transcript. 34 D&O 1, 2

DCAPA requires all testimony to be preserved unless parties agree to a lesser portion. 33 D&O 24-26

De novo hearing required where discussions held off the record and testimony is missing on tape. 33 D&O 27

The Hearing Examiner's admitted off the record discussions with the parties and decision on at least one of the issues of record violated the DCAPA by not having an "exclusive record for decisions". There was no way to preserve the off the record discussions that led to an off the record decision about the rent increase and lease. 26 D&O 197, n.11

APPEARANCE

The DCAPA does not mandate that a housing provider appear at an OAD hearing and present a defense. 27 D&O 62

ATTORNEY FEES

An applicant for an increase in attorney's fees bears heavy burden when seeking an enhancement of the presumptively reasonable lodestar figure (reasonable hours multiplied by a reasonable rate) 90-92

The Commission rules allow interest to compensate attorneys for delay in payment of attorney fees. The interest is calculated from the date of judgment. 29 D&O 98

OAD may award reasonable attorney fees to any prevailing party in any action under D.C. Code § 45-2592. 28 D&O 213

The Commission regulations allow both attorney fees and interest on attorney fees (14 DCMR § 3825-26). 28 D&O 214

The prevailing tenant has a presumptive right to attorney fees; however, attorney fees may be withheld, in agency's discretion, if the equities so indicate. 28 D&O 214

Attorney fees must be submitted within 10 days after the final decision and order.
28 D&O 214

If it is decided to award attorney fees, the factors enumerated in Frazier (which have been adopted in the regulations must be considered). 28 D&O 214

A prevailing party is one who succeeds on any significant issue in litigation.
28 D&O 215

The most useful starting point for determining attorney fees is the lodestar which is the number of hours reasonably expended on litigation multiplied by a reasonable hourly rate. 28 D&O 215

The party seeking an increase in attorney fees above the lodestar has the burden of proof.
28 D&O 215

The Commissions rules provide for simple interest on from the date of award until paid.
28 D&O 215

A party may at any time waive the right to interest on attorney fees the Commission decides requests for attorney fees only for services performed before it, and OAD decides only for services performed before OAD. 28 D&O 215, 220

The Laffey matrix allows a separate increase in the attorney fees rate per hour for each year. 28 D&O 222

The proper method under Laffey was to adjust each year's attorney's fee rate per hour separately, not to lump all years together for one adjustment as requested in this case.
28 D&O 223

Attorneys acting *pro se* are not eligible for receiving attorney fees. 28 D&O 250

Without proper request for attorney fees, Hearing Examiner is not required to make findings of fact and conclusions of law concerning the award of attorney fees.
28 D&O 250

Tenant, in order to prove claim for reduction in services and/or facilities, must present evidence of duration and severity and show that notice to housing provider was given.
28 D&O 281

Tenant has burden of proof regarding his reduction in services and/or facilities claim.
28 D&O 281

Neither case law nor the provisions of the Act permit a housing provider to transfer to a tenant his obligation to provide to the tenant, the services required by law in connection with the use and occupancy of a rental unit. 28 D&O 283, 284

Since tenants are not the prevailing party, they cannot receive attorney fees.
A number of factors must be considered in determining an award of attorney fees; they are. 27 D&O 31

Law is that pro se attorneys cannot be awarded attorney fees. 26 D&O 57,57, n.5

The 1977 Act did not provide for attorney fees, however, the superseding Act, does provide for attorney fees. 26 D&O 58

A lay representative cannot collect attorney fees because attorney fees are payable only to qualified attorneys. 26 D&O 60

Denial of attorney fees under the 1985 Act is valid where equities in case did not merit an award of attorney fees. 26 D&O 62

The 1985 Act creates a <u>presumptive</u> award of attorney fees to the prevailing party which may be withheld in the tribunal's discretion if the equities indicate otherwise.
26 D&O 62

The issue of whether attorney fees can be awarded in settled cases depends on the terms of the settlement. 26 D&O 62

ATTORNEY FEES

If the settlement agreement does not settle the issue of attorney fees then that issue should be submitted to the Hearing Examiner. Issue of attorney fees on settled cases requires findings of fact by the Hearing Examiner. 26 D&O 62

The 12 factors in making a determination for an award of attorney fees are known as the "lodestar". 25 D&O 100

Tenants representative and not tenant's counsel who is not an attorney may not receive attorney fees. 25 D&O 106

The Court interpreted the provision of the Act allowing attorney's fees to create a presumption for an award of attorney's fees to the prevailing party, and it applies to prevailing tenants in both tenant- initiated and landlord –initiated proceedings.
25 D&O 133

Attorney fees may be assessed in favor of the prevailing housing provider when the litigation of the tenants is frivolous, unreasonable or without foundation, although not brought in subjective bad faith. 25 D&O 133

Attorney's fees may be withheld in the Hearing Examiner's discretion if the equities indicate otherwise. 25 D&O 133

RHC concludes that under circumstances of the case, attorney's fees are to be withheld although the housing provider prevailed on the hardship petition. 25 D&O 136,137

BAD FAITH/TREBLE DAMAGES

Knowing violation of Act coupled with egregious conduct must be shown.
33 D&O 68-69

Tenant has burden of proving there was a knowing violations of Act. 33 D&O 68

Conduct is especially egregious when housing provider is an experienced real estate professional. 33 D&O 69

In order to determine if a housing provider acted in bad faith and is consequently liable for treble damages, there must be a two-prong analysis. 26 D&O 140

Hearing Examiner's finding that, among other things, housing provider deliberately refused to provide maintenance and repair services without just or good excuse and therefore acted in bad faith is upheld. Accordingly, the Hearing Examiner's decision to treble the damages awarded to the tenant is upheld. 25 D&O 113,114

"Bad faith"does not relate to improper registration. It relates to reduction of services and facilities and rent overcharges. 33 D&O 147

Treble damages based on bad faith for failure to properly register a housing accommodation are not permitted by the Act—only a fine. 33 D&O 147

BURDEN OF PROOF

Housing provider has burden of proving qualification for exemption from the Act.
33 D&O 181

The Act places burden on housing provider regarding issue of retaliation, provided tenant demonstrates she did one of six acts detailed in Act. 33 D&O 183-1

CALCULATION OF RENT CEILING

Tenant's rent ceiling decreased to reflect of change in services. 26 D&O 130

CALCULATION OF RENT REFUND

Calculation of interest on rent refunds. 26 D&O 130-133 (Interest Chart on 132)

CAPITAL IMPROVEMENT

The Act provides 4 different and independent factors which may be used to justify the approval of a capital improvement petition. 37 D&O 99

The Act provides the formula for calculating the rent-ceiling surcharge in the case of a building wide major capital improvement. 32 D&O 89-109

Petition for capital improvement of security system was denied for lack of permit for electrical work.

In reliance on DCCA authority, petition for capital improvement to elevators was remanded because the commercial units in housing accommodation were not counted as units to allocate the pro rata cost among all tenants. 31 D&O 160

Hearing Examiner was not in error for concluding based solely on an accountant's letter that the proposed improvements are depreciable under the IRS Code. 30 D&O 14, 18

Issue raised by tenants is denied since tenants do not identify what expenses they deem operating expenses rather than capital improvement expenses. 30 D&O 19

Provisions of Act (D.C. § 45-2520) governing the approval of capital improvement petitions do not require and inspection by the DCRA Housing Division, however, the depreciability of the costs is a separate issue under the Act, where the tenant' confused cost with depreciability. 30 D&O 16

Act does not require capital improvement work to begin 60days after tenants receive copy of capital improvement petition, rather Act requires Rent Administrator to render decision on a rent adjustment within 60 days after receipt of petition by the Rent Administrator not the tenants. Thus, housing provider was not precluded from starting the capital improvements by the date the tenants received their copy of the CI petitions.
30 D&O 19, 20

Prior capital improvements to elevator do not prevent approval of subsequent improvements to the same elevator. 30 D&O 22

DCCA holding that CI cost is properly allocable equally between commercial and residential tenants requires Hearing Examiner to admit evidence of all the commercial and residential rental units. 30 D&O 23

The Act requires housing provider to secure all necessary permits for the capital improvements, thus, work of capital improvement to security system requires a permit for electrical work to be done in connection therewith. 30 D&O 25, 26

CAPITAL IMPROVEMENT

In accordance with DCCA, the housing provider was obligated or had the burden of proof at the OAD hearing to present proof that all required permits were obtained. 30 D&O 27

Tenant's position that capital improvements were primarily for the commercial tenants and nonresidents was not sustainable under the law. 30 D&O 23, 27

No error occurred by Hearing Examiner in finding that the security capital improvements to the parking lot were part of the building wide - capital improvements; the tenants narrowly focused on the fact that the parking lot users paid a fee rather than the fact that tenants also paid a fee for use of the lot and tenants using the lot entrance to the building also benefited from the increased security. 30 D&O 29

Interest on capital improvement loan must be limited by law to the interest calculated for only 96 months. 27 D&O 40

Total capital improvement costs are to be treated as a loan. Alternatively stated, the loan equals total cost of the capital improvement, plus interest, plus service charges.
27 D&O 40

Total capital improvement costs are to be treated as a loan which is divided by 96 months and that figure is divided by the number of units in the housing accommodation to obtain the rent ceiling adjustment. 27 D&O 40, 41

Issue concerning capital improvement is whether the improvement would protect or enhance the health, safety, and security of the tenants or the habitability of the housing accommodation. 26 D&O 19

Handicap Ramp. Housing provider met burden of proof that newly constructed handicap ramp enhanced the habitability of the housing accommodation.
26 D&O 19, 20

Trash Compactor. Housing provider met burden of proof that trash compactor enhanced habitability of the housing accommodation by eliminating obnoxious odors and providing a more sanitary method of trash disposal. 26 D&O 20

Air Conditioning. Housing provider met burden of proof that two new air conditioning units (for the party room and exercise room) were proper capital improvements. 26 D&O 21

Asbestos. As there was no evidence that asbestos was present in the housing accommodation and needed to be removed, the housing provider failed to meet his burden of proof that removal of the asbestos enhanced the health, safety, and security of the tenants or the habitability of the housing accommodation.
26 D&O 22

Tenants failed to put in the record any proof that the party room was not included in the rent and therefore failed to meet their burden of proof. 26 D&O 21

There was no factual or evidentiary basis to support the housing provider's alleged cost of the asbestos removal; Thus, the housing provider failed to meet his burden of proof regarding the cost of the alleged improvement. 26 D&O 23

"Mandated" capital improvement versus "regular" capital improvement. For a discussion regarding the two. See 26 D&O 25 n.7

Voluntary compliance with American Disabilities Act ("ADA") does not automatically convert a "normal" capital improvement petition to a "mandated" capital improvement petition. 26 D&O 26, 27

The discretion of what capital improvement (mandated or normal) is to be used rests with the housing provider and not the tenants. 26 D&O 27 and 27, n.10

The housing provider has the burden of establishing to the satisfaction of the Rent Administrator, the amount and cost of the capital improvement, including interest and service charges. 26 D&O 27

The phrase "amount of cost" relates to "actual" cost and not " proportional" cost in a loan package. 26 D&O 28

Since the Act allows interest in the case of a capital improvement, it is important to calculate interest in accordance with the mathematical formula for interest.
26 D&O 28, 29

The regulation's (14 DCMR 4210. 40(a))does not refer to proportional costs but rather refers to "all compensation" which includes the amount of the actual costs, service charges and the actual interest for the 96-month period. 26 D&O 29

As regards regulation which refers to "that portion of a multi-purpose loan (14 DCMR 4210. 41 (a), " portion" means total of the actual cost of the capital improvements, plus allowable interest and service charges; the work "portion " does not mean the same as the word proportional. 26 D&O 30

Because the loan greatly exceeds the actual cost of the capital improvements, the tenants repay only that "portion" of the principal, service charges and interest on the loan used to perform the capital improvements. 26 D&O 30

Loan which greatly exceeded actual costs of capital improvements and the time for repayment of the loan, including interest was more than 3 times the 8 years allowed by the Act and therefore cannot be the basis for continuation of interest payment after costs are recovered by the housing provider. 26 D&O 31

The regulation (14 DCMR 4210.42) provides for those cases where the housing provider was limited by the maximum 20% rent ceiling increase and therefore could not recover the costs and service charges in 96 months. 26 D&O 31

The regulations (14 DCMR 4210.42) is consistent with RHC's interpretation that "costs' means actual costs and interest and service charges must be recovered during the 96 month recovery period stated in 14 DCMR 4210.19; thus the housing provider is limited to the recovery of actual costs plus interest and service chargers on the actual costs during the 96 month recovery period mandated by the Act and regulations, unless it was limited by the 20 0/0 maximum rent ceiling increase. 26 D&O 32

The housing provider must affirmatively prove the computations related to costs, interest and service charges paid to the lender and paid by the tenants. 26 D&O 35, 36

The Act sets forth four different and independent factors which may be used to justify the approval of a capital improvement petition. 26 D&O 50

The substantial evidence in the record showed an integral, yet separate component of the HVAC system (heat, ventilation and air conditioning system), the distribution and pumping system qualified as a capital improvement that would enhance the habitability of the housing accommodation by circulating cooler water which in turn would circulate cooler air to the tenants in the summer months. 26 D&O 51, 52

The Rent Administrator may treat, as a capital improvement, the installation of a major appliance, that has the essential characteristics of capital improvements when installed in less than all units; that is, the capital improvement has an extended life, is depreciable for tax purposes and serves to restore the housing accommodation by replacing a previous item of the same kind for which depreciation has been taken and which has outlived its usefulness. Thus, that part of the capital improvement petition requesting replacement should have been approved by the Hearing Examiner as a capital improvement based on the substantial evidence in the record. 26 D&O 52

Under the Act, the housing provider may receive a rent ceiling increase or surcharge for capital improvement (new roofs) even though he is receiving a depreciation write-off for the same improvement. 26 D&O 159-161

Housing Provider met burden of proving that roof replacements were necessary and that the replacements served to protect health safety and security of the tenant's and the habitability of the housing accommodation. 26 D&O 163

The Act does not prevent the granting of a capital improvement petition where the housing provider permitted the roofs of the housing accommodation to deteriorate to the point of requiring replacement. 26 D&O 163

New items may replace old items as capital improvements, e.g. replacement of master TV antenna, components of new security system and elevator parts and boiler.

CAPITAL IMPROVEMENT

26 D&O 213, 314

Hearing Examiner's denial of capital improvement for new carpeting, granite steps, furniture and molding is upheld because the tenants provided evidence more credible than that produced by the housing provider and because the housing provider failed to meet his burden of proof. 26 D&O 219, 220

Capital Improvement should not automatically be approved merely because it is newer or will add new features. What is required in reaching a determination is to balance the need for a moderately priced housing against the housing provider's desire to realize a return on his investment. The delicacy of this balancing process cannot be overstated. 26 D&O 219

CASE CAPTION

"Resident Manager" is not management agent of housing provider and therefore was properly excluded from caption of decision and order. 33 D&O 75-76

All hearing tapes of the record must be certified to RHD otherwise record is incomplete unless parties agree to a lesser portion. 33 D&O 205, 206

COMPARABLE UNITS

A tenant may challenge the vacancy adjustment if it was perfected based upon a comparable rental unit which failed to meet the criteria of §4207.4 which provides that a "substantial identical rental unit " is a rental unit which meets the following requirements…27 D&O 107,108

CONTINUANCE

RHC grants motion for continuance of appeal hearing citing its governing rules and noting that motion set forth-good cause. 37 D&O 3, 4

DECISIONS AND ORDERS

Hearing Examiner's misstatement of dates hearing occurred is harmless error.
31 D&O 185

Hearing Examiner is not required to list all of the evidence he considered in rendering the decision and order. 33 D&O 136

Hearing Examiner's had discretion to reasonably reject any evidence offered but findings and decisions must be reasonable in light of record facts and prevailing law.
33 D&O 186-187

Posthearing submissions which opposition has not had opportunity to review and rebut are not to be relied upon by the Hearing Examiner. 33 D&O 190

Reiteration of evidence is not a finding of fact; neither will generalized, conclusory or incomplete findings suffice. 31 D&O 142

When a decision a order does not contain findings of fact, the receiving body is compelled to remand the matter, because the record is in insufficient for review,
31 D&O 142-143

The wholesale adoption of a party's position, without any indication of an independent analysis by the Hearing Examiner, offends the adjudicator's process. 31 D&O 145

Hearing Examiner's have discretion to reasonably reject any evidence offered and is not bound to place in their decision each piece of evidence considered. 31 D&O 206

Record ordinarily closes or termination of hearing but may be held upon for post hearing submission of memoranda. 31 D&O 241-245

New evidence submitted post hearing may not be entered into the record and thus may not provide a basis on which and agency may issue a decision. 31 D&O 241-246

Findings of credibility by Hearing Examiner will not be disturbed if they are supported by the substantial evidence in the record as a whole. 27 D&O 27

Failure of Hearing Examiner to issue findings of fact violated the Act, DCAPA and 20 years of case law. 27 D&O 198

The Hearing Examiner does not have to explain why he chose one fact over another.
25 D&O 52

When housing provider stated he did not receive housing deficiency notice, this became a contested issue of fact requiring a written ruling by the Hearing Examiner in his decision and order. 31 D&O 20

Record is incomplete when tape is blank and there is no transcript. 34 D&O 1, 2

DCAPA requires all testimony to be preserved unless parties agree to a lesser portion. 33 D&O 24-26

De novo hearing required where discussions held off the record and testimony is missing on tape. 33 D&O 27

The Hearing Examiner's admitted off the record discussions with the parties and decision on at least one of the issues of record violated the DCAPA by not having an "exclusive record for decisions". There was no way to preserve the off the record discussions that led to an off the record decision about the rent increase and lease. 26 D&O 197, n.11

8/02 Supplement

Act does not invest hearing Examiner with power to nullify remand instruction of Commission. Thus, refusal to comply with remand instruction results in a decision which is arbitrary, capricious, an abuse of discretion and not in accordance with law. 38 D&O 60

DEFAULT DECISION & ORDER

Remand for de novo hearing required where OAD hearing notice includes incorrect address for housing provider and record does not show proof of delivery. 35 D&O 12

DEFAULT JUDGMENT

The DCCA has identified four factors that must be considered in order to determine whether to set aside a default judgment i.e. whether the movant received actual notice, acted in good faith, acted promptly and presented a prima facie case. 32 D&O 206

In absence of proper notice of hearing, the last three factors are moot and therefore do not require further discussion. 32 D&O 212 See also 30 D&O 114

Individual's presentation of defense that he did not own property at issue and therefore was not liable to the tenants for rent refund and treble damages met the factor to proffer a defense to reverse a default judgment. 30 D&O 130

In determining whether a default judgment against a housing provider should be vacated, four factors should be considered. 26 D&O 101

Since the tenant did not meet the first factor of the 4-prong list for vacating a judgment (the housing provider failed to receive the actual notice of the hearing), the decision of the Hearing Examiner denying the housing provider's motion to vacate is sustained.
26 D&O 101-103

If a party does not appear but appears through counsel, grounds for a default judgment do not exist. 26 D&O 116

DELAY IN ADMINISTRATIVE PROCESS

Because RHC is limited to review of RACD decisions it has no authority to grant relief for hearing delays caused by OAD. 30 D&O 184

EVICTION

The Act (D.C. Code § 45-2551) prohibits wrongful eviction. 25 D&O 120

EVIDENCE

Hearing Examiner committed error in allowing tenant to introduce in hearing photographs depicting housing code violations as they existed 2 years after the tenant filed the petition because there was no testimony that conditions photographed existed when petition was filed. 37 D&O 89

Tenants may receive award if they do not testify where they are joined on petition and had documentation admitted by official notice to support claims. 36 D&O 24, 25

Simplest and best way to prove rent increases demanded would be to subpoena housing provider's records or introduce copies filed with RACD. 36 D&O 24

Testimony of witness in two different cases must be considered separately. 36 D&O 143

Credibility findings will be given deference and will not be disturbed absent evidence in record to contrary. 33 D&O 37

Hearing Examiner not required to list all evidence, thus failure to recount housing provider's evidence is not fatal. 33 D&O 56

Substantial evidence defined. 33 D&O 57

Hearing Examiner is not required to list all of the evidence he considered in rendering the decision and order. 33 D&O 136

Hearing Examiner's had discretion to reasonably reject any evidence offered but findings and decisions must be reasonable in light of record facts and prevailing law.
33 D&O 186-187

Posthearing submissions which opposition has not had opportunity to review and rebut are not to be relied upon by the Hearing Examiner. 33 D&O 190

To prove the content of a writing (e.g. voluntary agreement on rent increase) recording or photograph, the original is required, except as otherwise provided in rules or Act of Congress, thus heresay testimony is in admissable to prove content of text of a document.
33 D&O 211

Date of unsigned voluntary agreement could not be proved with testimony since under case law document speaks for itself. 33 D&O 214

DCAPA precludes Hearing Examiner from relying upon findings of fact and conclusions of law in one case when findings are absent from decision that is subject to review.
33 D&O 236

Where parties offer conflicting testimony, credibility determinations must be made.
32 D&O 53

The Hearing Examiner has discretion to reasonably reject any evidence offered.
32 D&O 55

Hearing Examiner is entrusted with a degree of latitude in deciding how he shall evaluate and credit evidence presented. 32 D&O

In order for proponent of an allegation to prevail on the allegation, he must offer some evidence, oral or documentary, or both on the issue raised. 32 D&O 70

Because of its self-serving nature, the housing provider affidavit alone is in sufficient to rebut the presumption of receipt of hearing notice. 32 D&O 211

Reiteration of evidence is not a finding of fact; neither will generalized, conclusory or incomplete findings suffice. 31 D&O 142

When a decision a order does not contain findings of fact, the receiving body is compelled to remand the matter, because the record is in insufficient for review,
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New evidence submitted post hearing may not be entered into the record and thus may not provide a basis on which and agency may issue a decision. 31 D&O 241-246

It is the duty of the Hearing Examiner to determine the credibility of witnesses at the hearing. 31 D&O 244

It was error for Hearing Examiner to accept into evidence letters on basis of testimony of tenant's attorney when the tenant presented no testimony or other evidence regarding the letters and the housing provider did not recall seeing or receiving the letters.
31 D&O 243-244

Although housing inspector's report may have been properly admitted under the business record exception to the hearsay rule, the Hearing Examiner erred in holding that the hearing record would remain open for admission into evidence of the report where the

housing provider failed to subpoena the proper witness to lay the proper foundation for the admission into evidence of the report. 31 D&O 246

A housing provider is imputed to have knowledge of a reasonable prudent man involved in the business of renting properties in D. C. 31 D&O 247

As regards Hearing Examiner's finding that an award of treble damages was due the tenant, the Hearing Examiner drew reasonable inference that the housing provider deliberately refused to provide maintenance or repair services without just or reasonable cause or excuse as required by the DCCA. 31 D&O 248

Hearing Examiner properly found that housing provider was put on notice of housing code violations by letters sent to him by tenant and letters sent by tenant's counsel to the housing provider's counsel; thus the Hearing Examiner properly determined that the housing provider was not credible when he testified that he either did not recall receiving or did not receive notice of the housing code violations. 31 D&O 247, 248

The Hearing Examiner having taken official notice of the RACD registration file for the housing accommodation, no additional hearing is required to determine the rent ceiling. 31 D&O 250

Evidence, such as housing inspection reports, may not be submitted post hearing, or if so submitted, it cannot be considered. 30 D&O 14

The law allows hearsay in the form of letters or written statements in administrative hearings. 30 D&O 17

Heresay evidence can serve under some circumstances as substantial evidence on which to base a finding of fact. 30 D&O 17

Even though tenant may have stated a retaliation ground in his petition form, there was no evidence on the allegation before the Hearing Examiner since the tenant failed to testify at the OAD hearing about the retaliation (an alleged illegal conviction by lock out). 29 D&O 197-199

Findings of credibility by Hearing Examiner will not be disturbed if they are supported by the substantial evidence in the record as a whole. 27 D&O 27

Effect of prior OAD decision could not be considered by RHC because it was not entered into the record. 27 D&O

A party cannot sustain his burden of proof by simply showing a lack of substantial evidence to support a contrary finding. 27 D&O 110

Housing provider was not required to introduce evidence to prove the housing accommodation was maintained in good repair where tenant introduced no evidence to support his claim thereby shifting the burden of proof to the housing provider.
27 D&O 110

Failure of Hearing Examiner to issue findings of fact violated the Act, DCAPA and 20 years of case law. 27 D&O 198

The housing provider has the burden of proof with respect to the issue of whether required governmental permits and approvals have been secured. 26 D&O 24

Best evidence, i.e., copy of destroyed housing deficiency notices could be admitted into evidence because they were authenticated by the housing inspector.
26 D&O 152

Official notice is a concept that is designed to circumvent the time consuming efforts involved in proving what is obvious and notorious. 25 D&O 35

Official notice was taken during the course of the hearing; thus the housing provider's counsel was present with an opportunity to show the contrary. 25 D&O 34

There is no requirement that representatives of parties (hire to tenants) be sworn before they submit documents by official notice. 25 D&O 39,40

The simplest way to prove what rent increases were demanded … would be to subpoena the housing provider's records or to introduce copies of the notices filed with the Rent Administrator. <u>These records would constitute the best evidence of the housing provider's actions and would avoid parading a long line of tenant's before the Rent Administrator each of whom would swear to the amount and date of his or her increase</u>, there is no record that the association's counsel ever sought to use either source, but this illustrates why rent increase notices must be filed with the Rent Administrator. (emphasis added.) 25 D&O 42]

<u>See</u> <u>Hutchinson</u>, 710 A.2d 727 which allowed use of transcript for an unavailable witness.

It is solely within the province of the Hearing Examiner to resolve inconsistencies in evidence. 25 D&O 52

The Hearing Examiner does not have to explain why he chose one fact over another.
25 D&O 52

Test of document must be proved by sworn testimony and not simply statements of counsel. 34 D&O 37,39

Defect cannot exist in Amended Registration Form that was not filed in RACD. 38 D&O 85

It is the duty of the Hearing Examiner to determine the credibility of witnesses. 38 D&O 118

When one party's testimony contains some conflicting details, the Hearing Examiner does not necessarily abuse his discretion by accepting the totality of that party's testimony over that of the opposing party. 38 D&O 118

Note: See summaries under "HEARING TAPE".

EXEMPTION FROM ACT

Housing provider has burden of proving each claimed of exemption. 34 D&O 12, 21

Filing of claim does not *ispso facto* meet burden. 34 D&O 12, 13

"Documentation must be produced to establish exemption. 34 D&O 13

Text of document cannot be proved with parole evidence. 34 D&O 13

Text of document must be proved by sworn testimony and not simply statements of counsel. 34 D&O 37, 39

Technical violations in registration form 30 days to case. 34 D&O 40, 41

When housing provider stated he did not receive housing deficiency notice, this became a contested issue of fact requiring a written ruling by the Hearing Examiner in his decision and order. 31 D&O 20

Failure to give tenant notice renders exemption void ab initio. 27 D&O 162

The relevant case law distinguishes from the Act in terms of whether the housing provider actually filed the claim of exemption form. If, not filed, then the Hearing Examiner must make findings of fact whether "special circumstances" exist to excuse the failure to file the exemption. The special circumstances are. 27 D&O 158,159

Exemption under Act does not divest RAD or RHC of subject matter jurisdiction.
34 D&O 12

Tenant's HUD-subsidized rental unit is not excluded from all of the provisions of the Rental Housing Act-only the Act's rent control provisions. 34 D&O 12

FINE

While the Act sets a maximum fine ($5,000.00) for failure to register, it does not prescribe a minimum fine D.C. Codes § 45-2591(b). 28 D&O 285

The Act does not provide that litigants are entitled to a portion of fines, as a remedy. Thus, the tenant was not entitled to a portion of the fine the Hearing Examiner imposed on the housing provider. 25 D&O 127

HEARING NOTICE

Failure of certified file to contain return receipt. 36 D&O 68, 69

HEARING TAPE

Failure of Hearing Examiner to record all testimony constitutes reversible error.
36 D&O 129-132

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All testimony in a contested case must be preserved, unless the parties agree to a lesser portion. 38 D&O 18

Hearing Examiner's failure to record submission of rent increase notices during recess for settlement discussions compels remand by commission since it cannot review the entire record without the complete recording. 38 D&O 17 and 18

Hearing Examiner's statement on the record that he held discussions off the record was reversible error. 38 D&O 19

HOUSING CODE VIOLATIONS

The Act (D.C. § 45-2518(b) (I) permits the housing provider to certify that substantial code violations have been abated. 31 D&O 193

INTEREST

Calculation of interest through date of final order. 34 D&O 113-115

Use of interest rates identical to Superior Court. 34 D&O 115-119

Interest is calculated from the date of violation (or when services were interrupted) to the date of issuance of the decision, the interest calculation appears on the following chart. 28 D&O 305, 306

Interest is calculated using the formula: interest = principal x rate x time. 26 D&O 204

In accordance with current regulations, simple interest may be imposed on rent refunds which is calculated from the date of the violation (or) when services were interrupted) to the date of the issuance of the decision. 26 D&O 131

A separate calculation of interest is performed for each year to arrive at the total. 26 D&O 131

Interest appears on the interest charts. 26 D&O 131, 132, 141, 142

Interest is calculated by multiplying the amount of the overcharge by the number of months the overcharge was held by the housing provider by the annual judgment interest rate which has been converted to a monthly rate. A separate calculation is performed for each month to arrive at he total. 26 D&O 204, 205

The interest on the refund shall be calculated for the entire period of litigation, i.e., from the date the services were interrupted to the date of the OAD decision and shall be the judgment interest rate used by the D. C. Superior Court on the date of issuance of the decision. 26 D&O 205

The Hearing Examiner must use simple interest for interest calculations. 25 D&O 54

Since the Act allows interest in the case of a capital improvement, it is important to calculate interest in accordance with the mathematical formula for interest. 26 D&O 28, 29

ISSUES

Issues to be adjudicated must appear in the petition, and the tenant must prove that the conditions existed before the tenant filed the petition. 37 D&O 90

Filing of petition is the cut off point for issues to be adjudicated; if it were not, the landlord would never know what was to be defended. 37 D&O 90, 91

JUDGMENTS

The RHC has no authority to enforce judgments. Judgment orders must be enforced in D. C. Superior Court. 25 D&O 9, 10

Tenants who did not appear to testify at the OAD hearings may receive awards of damages where they had joined together with other tenants on the tenant petitions, agreed to one representative and had documentation admitted by official notice to support each tenant's claim. Compare, however, case which did not involve evidence admitted by official notice. Compare Lenkin ere where there was neither a tenant association nor a joining together of other tenant's as parties on the petition contesting the increased rents. 25 D&O 41, 43

JURISDICTION

Exemption under Act does not divest RAD or RHC of subject matter jurisdiction. 34 D&O 12

Tenant's HUD- subsidized rental unit is not excluded from all of the provisions of the Rental Housing Act –only the Act's rent control provisions.

Neither Commission nor RACD has jurisdiction to reimburse a tenant for expenses related to the housing accommodation (e.g., gas service) or harm to the tenant's credit rating. 33 D&O 146

MOTION TO DISMISS

The Hearing Examiner violated the regulations (14 DCMR 4008.1 and 4008.5) when he failed to render a decision on the housing provider's motion to dismiss. 31 D&O 190

The Act (D.C. Code § 45-2526 (f)) provides that OAD may dismiss a petition filed within 6 months immediately preceding the filing of a later petition. 31 D&O 190

MOTION TO VACATE

The factors to be considered when deciding a motion to vacate a default judgment are set forth in DCCA Radwan case. 29 D&O 104

The first Radwan factor is notice. 29 D&O 208, 209 See also 29 D&O 219

MOTION TO WITHDRAW

Dismissal with prejudice not justified. 36 D&O 3-5

NOTICE

Agency failed to provide proper notice of agency decision because it failed to send the decision by certified mail or other service that assures delivery. 30 D&O 113

The law for services of notice of hearings and services of decisions and orders is stated in the Act. 30 D&O 127

NOTICE OF APPEAL RIGHTS

Not required to be given by DCAPA or Act. 34 D&O 47

NOTICE OF HEARING

OAD must strictly adhere to notice requirement of Act. 32 D&O 211

Failure to give proper notice is a violation of due process. 32 D&O 211

OFFICIAL NOTICE

No requirement that one be sworn in before submitting or offering document by official notice. 36 D&O 22-24

Hearing Examiner's decision is reversed where parties were not given opportunity to rebut official notice of facts not in the hearing record but in RACD registration file. 33 D&O 170

Official notice does not require a sworn witness to introduce an agency document. 27 D&O 159 n.1

The Hearing Examiner having taken official notice of the RACD registration file for the housing accommodation, no additional hearing is required to determine the rent ceiling. 31 D&O 159

Party must request or Hearing Examiner may sua sponte take official notice of but is not required to do so without motion. 34 D&O 27

The Hearing Examiner having taken official notice of the RACD registration file for the housing accommodation, no additional hearing is required to determine the rent ceiling. 31 D&O 250

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Principle that court may generally take judicial notice of it's own record is applicable to an administrative agency. 38 D&O 6

Hearing Examiner may take official notice of housing provider's RACD registration file (including the Certificate of Election contained therein) and any other documents found in the public record. 38 D&O 6

Regulation empowers Hearing Examiner to exercise discretion and take official notice of RACD registration file. Regulation does not impose affirmative duty upon Hearing Examiner to take official notice of housing provider's registration file. 38 D&O 21

Failure of Hearing Examiner to take official notice of documents in OAD record is not reversible error unless the Hearing Examiner fails to take official notice after a witness testified that the documents were in the OAD file. 38 D&O 21

Official notice taken of any fact shall satisfy a party's burden to prove that fact. 38 D&O 21

Each party must be afforded opportunity to comment where Hearing Examiner takes official notice after hearing of information in public record. 38 D&O 21

OFFICIAL NOTICE

Hearing Examiner did not err when he elected not to exercise his prerogative to take official notice of the housing provider's RACD registration file. 38 D&O 23

PARTIES

Association cannot raise and litigate rent ceiling issue of tenants who are not members of the Association or who joined the association after the tenant petition was filed.
29 D&O 48

Hearing Examiner committed plain error when he failed to identify in his decision and order individual tenants who were parties before him. (There were over a hundred potential tenant parties.) 37 D&O 36 and 37 D&O 33, n.2

The Hearing Examiner's failure to identify tenants in his decision and order who were parties in the case before him deprived the tenants of standing to appeal. 37 D&O 36

The failure to attach exhibit lists or appendices to the decision and order and the failure to make findings of fact and conclusions of law on the identity of the tenant parties was plain error by the Hearing Examiner. 37 D&O 36, 37

Reward instructions: OAD to make findings of fact and conclusions of law on the identity of the tenants by name and address, including unit number and resolve the issue of who are the tenant parties in the OAD decision and order and which are elderly and/or disabled for the purpose of claiming exemption from the capital improvement surcharge. 37 D&O 37, 42, 43

PLAIN ERROR

Defined Cite. 37 D&O 33,n.2

PROCEDURAL RULES

Superior Court rules relied on when RHC (OAD) rules are silent. 36 D&O 3

Act does not cover Housing Provider's late or improper filing with Hearing Examiner---only the rules implementing the Act. 33 D&O 147

PROOF OF DELIVERY OF DECISION

Certifed mail, hand-delivery by RAD. 35 D&O 88

PROOF OF NOTICE OF HEARING

Return receipts for certified mail absent from certified record. 36 D&O 69

PROPERTY DAMAGES OR LOSSES

Act does not grant jurisdiction over claims of property damages and losses. 36 D&O 27, 28

OAD lacks jurisdiction to award property damages for. 34 D&O 19

PRO SE REPRESENTATION

Failure to follow procedure of tenant. 35 D&O 15

Refusal to participate in hearing or make argument tantamount to withdrawal of appeal and cause for dismissal.
35 D&O 15, 16

But since no motion to withdrawal was actually filed by tenant, RHC will consider merits to appeal. 35 D&O 16

RECUSAL

The Chief Administrative Law Judge has no duty under the regulations to respond to the housing provider's motion for the Hearing Examiner to disqualify himself.
30 D&O 115, 116

A hearing de novo should be held before another Hearing Examiner if the Hearing Examiner before whom the motion was filed grants the motion for disqualification.
30 D&O 117

Hearing Examiner is reversed where he did not require tenants to notify new owner of motion to add his name to the petition as a party and also allow the new owner to file written opposition to the motion. 30 D&O 12

REDUCTION IN SERVICES OR FACILITIES

Tenant has burden of proof and for the tenant to prevail, a 3-prong test must be satisfied. 37 D&O 100

Refund may be ordered for reduction in services beyond the date the petition was filed and through the date of the close of the hearing record if such is the case. 37 D&O 91

Hearing Examiner committed error in allowing tenant to introduce in hearing photographs depicting housing code violations as they existed 2 years after the tenant filed the petition because there was no testimony that conditions photographed existed when petition was filed. 37 D&O 89

Quiet enjoyment does not include noise. 35 D&O 46, n.14 and cites at 71

Notice required for housing provider liability. 34 D&O 56

No scientific, mathematical, or actuarial way of measuring. 34 D&O 58

Hearing Examiner's knowledge, expertise and discretion will be relied or in measuring. 34 D&O 58

Basis for valuation must be set forth in decision. 34 D&O 59

Reduced value of accommodation to zero. 34 D&O 59

Calculation of whether rent was higher, equal to or lower than rent ceiling required. 34 D&O 61

Calculation chart. 34 D&O 63

Bad Faith (repeated repair requests) 34 D&O 64-68

Bad Faith, defined. 34 D&O 64-65

Current rent ceiling must be stated. 34 D&O 61

Law concerning reduction of services and facilities. 34 D&O 125-133

Storage room lockout. 34 D&O 133-136

Inoperative and defective store. 34 D&O 132, 133

REDUCTION IN SERVICE OR FACILITIES

Proof required of tenant includes proof of giving of notice to housing provider of conditions constituting violation. 33 D&O 43, 44

Tenant cannot prevail on claim of reduction in services and facilities unless Hearing Examiner finds the housing provider reduced services or facility that was previously provided and that the reduction was substantial. 33 D&O 58

Calculation or violation period. 33 D&O 61

Interest entitled to or refund. 33 D&O 61, 62

Notice of housing code violation not required to evince deficiencies in tenant's unit.
33 D&O 61 n.7

Violation period limited to the 3 years immediately preceding date tenant petition was filed. 33 D&O 62

"Rent" defined. 33 D&O 62

Fact that tenant did not pay full amount of rent does not limit refund since Housing Provider is liable for entire amount of money demanded or received which exceeds rent ceiling. 33 D&O 62

Rent ceiling to be decreased to reflect proportionally the value of the change in services of facilities. 33 D&O 63

Housing provider is not entitled to have rent refund credited towards the tenant's rent.
33 D&O 63

Housing provider liable for rent refund only if rent charged is higher than reduced rent ceiling. 33 D&O 79

Calculation of reduction of services and facilities. 33 D&O 79

Reduction in services cannot be scientifically measured thus RHC must rely on Hearing Examiner's knowledge, expertise and discretion as long as there is substantial evidence.
33 D&O 49

Adding value of reduction of services to rent charged is incorrect (correct calculation by RHC is shown). 33 D&O 81, 82

There is no law that Hearing Examiner must accept tenant's evaluation of reduced services and facilities; and he may find the evaluation to be exaggerated.
33 D&O 145, 146

REDUCTION IN SERVICE OR FACILITIES

OAD has no jurisdiction to reimburse tenant for expense related to housing accommodation (e.g., gas service) or harm to tenants credit rating. 33 D&O 146

"Bad Faith" does not relate to improper registration; it relates to reduction in services and facilities and rent overcharges. 33 D&O 147

Act includes no provisions for reimbursement of security deposit and expenses.
33 D&O 148

Housing provider may collect rent despite existence of housing code violations in housing accommodation. 33 D&O 149

Roof deck, while not listed in registration as a related or optional facility was a related facility and not an optional service. 33 D&O 160

Roof deck, which was permanent, was related facility because it was a common area used by tenants without an additional fee but rather in conjunction with payment of rent.
33 D&O 160-165

With respect to related services and facilities listed by housing provider in registration file, housing provider is bound by information contained in that file. 33 D&O 159

Related services and facilities may be required by a written agreement. 33 D&O 159

Related Facility means. 33 D&O 159

Three-year statute of limitations applies to petitions filed with respect to reduction of services. 33 D&O 163

Clarification and distinction between "optional" and "related" services. 33 D&O 164

Lease provision which stated tenant would not be entitled to rent reduction if use of recreational facilities is interrupted or discontinued is not enforceable since it is contrary to the Act. 33 D&O165, 166

Interest on rent refund is to be calculated from date of violation (or when service was interrupted) to date of issuance of the decision. 33 D&O 167, 168

Tenant's rent and rent ceiling as of the initial date the facility was reduced is to be determined and stated by the Hearing Examiner in his decision. 33 D&O 168

The tenant cannot prevail on reduction in services or facilities claim unless Hearing Examiner finds:

REDUCTION IN SERVICE OR FACILITIES

1. The housing provider reduced a service or facility that was previously provided and the reduction was substantial.

2. The tenant put the housing provider on notice. 32 D&O 54

Violations were not substantial in nature, duration or severity and presented no threat to health. 32 D&O 54

Housing provider made repairs in reasonable and timely manner whenever there was notice of alleged reduction in service or facility. Housing provider's rent increase notice was defective because it did not, as required by the Act, contain a statement of current rent utilities covered by rent, summary of tenant's rights or list of sources of technical assistance published in the D.C. Register. 32 D&O 60

The housing provider is liable for rent refund only if the rent actually charged is higher than the rent ceiling; where the rent charged is equal to or lower than the reduced rent ceiling there has been no excess rent collected and no refund is required D.C. Code §§ 45-2521 and 45-2591 (a). 31 D&O 183

The regulation (14 DCMR 4214.17) provides OAD with the discretionary authority to dismiss tenant's petition where the tenant does not allege of support his valuation of the reduced services. 31 D&O 196

Because tenant failed to establish monetary value for a reduction of services claimed, the decision of the Hearing Examiner on this issue is reversed. 31 D&O 205

Under the Act, a finding of bad faith and thus a treble damage award requires egregious conduct, deliberate refusal to perform without a reasonable excuse, dishonest intent, sinister motive or a heedless disregard of duty. 31 D&O 197

In order to determine the housing provider acted in bad faith and therefore is liable for treble damages, there must be a two-prong analysis. 31 D&O 197

The Act provides for a penalty for a tenant's refusal to admit the housing provider or his contractor to inspect his unit but it does not mandate dismissal of the petition as that penalty; specifically, the Act does not provide the Hearing Examiner with the authority to dismiss a petition for a tenant's refusal to permit and inspection of his rental unit.
31 D&O 199

A housing provider is imputed to have knowledge of a reasonable prudent man involved in the business of renting properties in D. C. 31 D&O 247

REDUCTION IN SERVICE OR FACILITIES

As regards Hearing Examiner's finding that an award of treble damages was due the tenant, the Hearing Examiner drew reasonable inference that the housing provider deliberately refused to provide maintenance or repair services without just or reasonable cause or excuse as required by the DCCA. 31 D&O 248

Hearing Examiner properly found that housing provider was put on notice of housing code violations by letters sent to him by tenant and letters sent by tenant's counsel to the housing provider's counsel. Thus the Hearing Examiner properly determined that the housing provider was not credible when the testified that he either did not recall receiving or did not receive notice of the housing code violations. 31 D&O 247, 248

Hearing Examiner used incorrect method to determine the amount of the refund awarded the tenant; Hearing Examiner utilized the rent charged the tenant rather than reducing the rent ceiling based on the reduction of services and facilities. 31 D&O 248, 249

The Hearing Examiner having taken official notice of the RACD registration file for the housing accommodation, no additional hearing is required to determine the rent ceiling. 31 D&O 250

A lack of extermination, constant overflow of trash in dumpster, a malfunctioning refrigerator, a lack of heat, etc. represent a substantial reduction in services which created sanitary and health problem for the tenants. 30 D&O 61,72

OAD, like RHC, does not possess the judicial powers, as the courts do, to formulate equitable remedies. 29 D&O 36 n.10

Under the Act, a rent ceiling adjustment is the only remedy that a tenant can receive for elimination or reduction of services and facilities, however, after the adjustment of the rent ceiling, a tenant may receive a rent rollback of the rent charged which exceeds the adjusted rent ceiling. 29 D&O 37, 38

Statute of limitation provision in Act prevents ordering housing provider to adjustment ceilings for reductions of services and facilities that occurred in excess of 3 years before petition was filed. 29 D&O 38, 45

The Rent Administrator approved the ceilings in the voluntary agreement in 1990; this since the petition was filed in 1995, it was filed more than a year beyond the Act's 3-year statute of limitations. 29 D&O 45

The statute of limitation bars any investigation of the validity of either rent levels or rent ceilings implemented more than 3 years prior to the date of the tenant petition.
29 D&O 45

Issue of whether rent increases were taken in accordance with voluntary agreement cannot be divided since the alleged increases are barred by the 3-7 year statute of limitations. 29 D&O 46

Elimination of resident manager's position did not reduce services at the housing accommodation since there was always another employee present at he premises to perform the duties that tenants contended the resident manager was doing.
29 D&O 50-52

The DCCA and the RHC have established a similar standard when reviewing damages awarded for reduction in services and/or facilities, i.e. the decision and order must provide a discussion of the relationship between the existence, severity and duration of the violations that were found to exist and the relief in the form of rent refunds awarded to the tenant(s). 28 D&O 242

Mathematical precision in fixing the exact value of the reduced services and/or facilities is not required. 28 D&O 243

After determining what services were reduced, the Hearing Examiner is to assign a value to the service, and determine the duration of the reduced services if the reduced service and then include specific dollar amounts for each services reduced. 28 D&O 244

The Hearing Examiner failed to explain the date he fixed for 8 housing code violations, his finding regarding the date of the reduced services and why he limited the tenant's refund to a particular period of time. 28 D&O 246

The DCCA has held that housing providers are required to reimburse tenants for utility bills where the evidence shows that utilities were included in the rent. 28 D&O 247

A housing provider's registration statement, lease agreement or testimony constitute substantial evidence necessary to show that utility payments were the responsibility of the housing provider as a part of the related services offered in the lease. 28 D&O 248

Tenants out-of–pocket costs for repairs to housing accommodation are not recoverable under the Act, only damages of excessive rents through rollbacks or refunds for rents paid in excess of the rent ceiling. 28 D&O 249

Tenants desiring recovery of out-of-pocket expenses must litigate the issue in court.
28 D&O 249

Claim of elimination of resident manager's position is barred by the statute of limitations since the position was eliminated more than 3 years prior to the filing of the petition.
27 D&O 28

REDUCTION IN SERVICE OR FACILITIES

The statute of limitations is an absolute bar to filing a claim and recovery of a refund for reduction in services when the reduced services began or facts relied upon occurred more than 3 years prior to the filing of the petition. 27 D&O 28

Evidence supported Hearing Examiner's findings that housing provider reduced tenants' services and facilities when he closed 1st floor office. 27 D&O 29

There was no reduction of services concerning trash bin or resident manager since another employee performed duties to the manager. 27 D&O 29

Hearing Examiner assessment of a $5.00 reduction in rent for loss of 1st floor office was arbitrary since the he failed to justify or explain how the amount was determined.
27 D&O 29 but see 29, n.6

Hearing Examiner's conclusion of law that the tenant failed to meet his burden of proof regarding alleged reduced services and facilities was not supported by the substantial evidence. 27 D&O 102-107

Housing provider was not required to introduce evidence to prove the housing accommodation was maintained in good repair where tenant introduced no evidence to support his claim thereby shifting the burden of proof to the housing provider.
27 D&O 110

OAD does not have jurisdiction over complaints concerning damage to personal property; thus, the Hearing Examiner is not empowered to resolve the tenant's claims concerning his personal property. 27 D&O 111

Under the Act, for a tenant to successfully pursue a claim of reduction or elimination of services, a 3-prong test must be satisfied. 26 D&O 80

There was substantial evidence in the record to support the Hearing Examiner's finding that the housing provider had not reduced the services at the tenant's apartment with respect to his bathroom. 26 D&O 82

Substantial evidence in record showed housing provider put on sufficient evidence to rebut tenant's allegations of reduction in services. 26 D&O 86

If the tenant produces satisfactory evidence of the existence, duration and severity of the reduced services, the Hearing Examiner may set a monetary value which rationally flows from the evidence without direct or expert testimony concerning the dollar value.
26 D&O 125

The housing violations cited in the deficiency notices, the testimony of the housing inspector, the photographs, documents, and testimony introduced by the tenant, among other things, constitute proof of a reduction in services and facilities. 26 D&O 128

There was no evidence that the housing provider requested a decrease in the tenant's rent ceiling to reflect the decrease in related services and facilities pursuant to the Act during the period he was unable to make repairs. 26 D&O 128, n.11

A housing provider is imputed to have knowledge of a reasonable, prudent person involved in the business of renting properties in the District. 26 D&O 129 n.13

A six-month delay in correcting a violation is unreasonably long. 26 D&O 129

The reduction of the tenant's rent ceiling by $50/month to reflect the reduced value in services for the stated period is based on the record evidence of more than 20 housing-code violations, the tenants testimony and exhibits, the housing provider's acknowledgement of the violations and his unreasonably long delay in correcting the violations. 26 D&O 130

In accordance with current regulations, simple interest may be imposed on rent refunds which is calculated from the date of the violation (or when services were interrupted) to the date of the issuance of the decision. 26 D&O 131

A separate calculation of interest is performed for each year to arrive at the total.
26 D&O 131

Interest appears on the interest charts. 26 D&O 131, 132,141,142

The tenant did provide competent evidence of the existence, duration and severity of the myriad conditions about which he complained. 26 D&O 201

In order to determine if the housing provider acted in bad faith and is consequently liable for treble damages, there must be a knowing violation of the Act coupled with egregious conduct. The tenant has the burden of proving a knowing violation of the Act.
26 D&O 201

Knowing only requires knowledge of the essential facts which brings the conduct within reach of the Act. From such knowledge, the law presumes knowledge of the legal consequences that result from the performance of the conduct prohibited by the Act.
26 D&O 201

The Court upheld the award of a refund for rent the housing provider overcharged but never collected. 26 D&O 203

The tenant is entitled to a refund for each month he paid rent in excess of the rent ceiling which is decreased to reflect a decrease in services. 26 D&O 203, n.15

The housing provider is liable for the amount by which the entire amount of money demanded or received exceeds the rent ceiling. 26 D&O 204

Interest is calculated using the formula: interest = principal x rate x time. 26 D&O 204

Interest is calculated by multiplying the amount of the overcharge by the number of months the overcharge was held by the housing provider by the annual judgment interest rate which has been converted to a monthly rate. A separate calculation is performed for each month to arrive at the total. 26 D&O 204, 205

The interest on the refund shall be calculated for the entire period of litigation, i.e., from the date the services were interrupted to the date of the OAD decision and shall be the judgment interest rate used by the D.C. Superior Court on the date of issuance of the decision. 26 D&O 205

Hearing Examiner's finding that, among other things, housing provider deliberately refused to provide maintenance and repair services without just or good excuse and therefore acted in bad faith is upheld. Accordingly, the Hearing Examiner's decision to treble the damages awarded to tenant is upheld. 25 D&O 113, 114

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ALJ's decision is not in accordance with law since he, in determining that there was damage to the tenant's rental unit, impoorly interjected an element of fault and a requirement of an adverse impact on the tenant's health, safety and welfare, which are not required by statute. 38 D&O 90

Court in interpreting the reduction in services and facilities provision of the Act, requires only that there be a finding by the Rent Administrator that there has been a substantial change in the services or facilities provided by the landlord. It does not require the Administrator to look beyond the substantial change to ascertain whether an affirmative act by the landlord caused the damage. The question of substantiality goes simply to the degree of loss which is substantiated by the length of time the tenants were without service. 38 D&O 90

ALJ's finding that damage to tenant's unit was caused through no fault of the housing provider added an element of culpability to the statute that the court soundly rejected. 38 D&O 91

Hearing Examiner improperly expanded the substantial reduction standard by defining the test for substantiality as being whether the housing provider's failure to provide a service constituted a threat to the tenant's health, safety or welfare. While this is a useful test, it is not exclusive. 38 D&O 91

It is entirely possible that there could be substantial reductions in services and facilities even where the threat to health, safety and welfare test is not fully met and even though the alleged violation did not constitute a violation of the housing regulations. 38 D&O 91

For reduction in air conditioning and maintenance and repair services, see n.1, 38 D&O 91

REDUCTION IN SERVICE OR FACILITIES

To prove a claim for reduction in services and facilities, tenant must:

1. present complete evidence of the existence, duration and severity of the reduced services and facilities
2. give the housing provider notice

38 D&O 92

If tenant presents satisfactory evidence, the Hearing Examiner may set up a monetary value which rationally flaws from the evidence without direct or expert testimony concerning the dollar value. 38 D&O 92

A landlord is required to maintain the habitability of a rental unit by making necessary repairs in a reasonable, prompt and complete manner, once the need for such repairs as been brought to his attention. 38 D&O 94

The housing provider's failure to make satisfactory repairs to a damaged ceiling and correct a leak and falling out plaster constituted a substantial reduction in services and facilities. 38 D&O 95

The question of substantiality goes simply to the degree of loss. The degree of loss is substantiated by the length of time that the tenants were without service. 38 D&O 96

The ALJ is to establish a value of the reduced services by drawing upon his experience and the evidence of the existence, duration and severity of the reduced services or facilities. 38 D&O 97

ALJ may establish the monetary value of reduced services or facilities without expert or other testimony. 38 D&O 97

ALJ is to issue findings of fact that state the tenant's legal rent ceiling and rent charged. Thereafter, the ALJ shall reduce the ceiling by the monthly value of the reduced services or facilities. 38 D&O 97

Housing provider is liable for rent refund only if the rent charged is higher than the reduced rent ceiling. 38 D&O 97

Where the rent actually charged, is equal to or the lower than the reduced rent ceiling, there was no excess rent collected and no excess rent collected and no refund is required. 38 D&O 97

Regulation provides that large number of housing code violations, each of which may be either substantial or nonsubstantial, because of the number of violations. 38 D&O 97, n.2

REGISTRATION

Housing accommodation is not properly registered where (1) owner did not obtain certificate of occupancy or business license in her name and (2) where certificate of occupancy reflects 4 rental units and housing business license reflected 5 rental units.
37 D&O 17, n.2

Housing provider's failure to register housing accommodation for a number of years warrants a substantial fine. 33 D&O 63

Act provides for registration of rental units as either covered by Act or exempt from the Act. 33 D&O 137

Treble damages based on bad faith for failure to properly register a housing accommodation are not permitted by the Act—only a fine. 33 D&O 147

See cites re small housing provider exemption (ownership of 4 fewer rental units)
33 D&O 137

Improper registration merits a fine not a rent rollback. 33 D&O 142

Fine should have been considered where housing provider failed to report change in status from exempt within 30 days as required by Act, and for false statement of exemption. 33 D&O 141

Fine warranted for failure to obtain certificate of occupancy. 33 D&O 144

Treble damages based on bad faith for failure to properly register a housing accommodation are not permitted by the Act—only a fine. 33 D&O 147

Remedy of imposition of fine is available for housing provider's failure to timely pay fees for housing business license. Fines are imposed for late payment of fees for housing business license because during the periods the housing provider failed to pay the fees for the housing business license he was not properly registered, DC Code § 45-2515 (f0 (I).
31 D&O 172, 173

The Act does not prevent the collection of rent by the housing provider when he fails to properly register, however, the fines that can be imposed, do have the effect of reducing the profit from failure to properly register and operating without a valid business license.
31 D&O 173, 174

Under the Act, a rent ceiling adjustment is the only remedy that a tenant can receive for elimination or reduction of services and facilities; however, after the adjustment of the rent ceiling, a tenant may receive a rent rollback, if the rent charged exceeds the adjusted rent ceiling. 29 D&O 37, 38

Because wife of husband housing provider sold her ownership interest to her husband, she had no direct or indirect interest in the housing accommodation when the husband filed his Registration/ Claim of Exemption Form. 29 D&O 77, 78

Hearing Examiner was correct when he stated partnership could not be exempted from the Act as a small housing provider since DCCA supports determination that Act excludes partnerships as natural persons who are eligible from exemption.
29 D&O 78, 79

Even though housing provider registered the housing accommodation in the name of a partnership, housing provider was nonetheless exempt because the partnership had effectively resolved by law when the only other partner sold her interest to the remaining single partner –her husband. 29 D&O 79,80,and 152-156

The Act requires proper registration with proof of a housing business license.
29 D&O 201

Fine of $200 for failure to register the housing accommodation will not be disturbed where evidence supports finding that the housing provider's failure to register was neither knowing or willful. 28 D&O 285

While the Act sets a maximum fine ($5,000.00) for failure to register, it does not prescribe a minimum fine. 28 D&O 285

Evidence supported Hearing Examiner's findings that housing provider reduced tenants' services and facilities when he closed 1st floor office. 27 D&O 29

There was not reduction of services concerning trash bin or resident manager since another employee performed duties of the manager. 27 D&O 29

Hearing Examiner assessment of a $5.00 reduction in rent for loss of 1st floor office was arbitrary since the he failed to justify or explain how the amount was determined.
27 D&O 29, but see 29, n.6

Hearing Examiner was correct in finding and concluding that conversion of non-rental units did not qualify as being exempt from registration based on new construction because of the issuance dates on the Certificates of Occupancy. 27 D&O 127, 128

As regards the newly constructed unit exemption from the Act's registration requirements, the Act does not contemplate the scheme of a unit that was initially a residential unit being converted to a nonresidential unit and then being converted to a residential unit. 27 D&O 129

To allow a housing provider to take residential units off the market by converting them to temporary nonresidential units and later reconverting them back to residential units with a

claim of exemption from rent control would defeat one of the purposes of the Act, to protect existing supply of rental housing from conversion to other uses; Compare decision where RHC approved newly created rental unit which was previously an uninhabitable garage. 27 D&O 129, 130

The relevant case law distinguishes exemption from the Act in terms of whether the housing provider actually filed the claim of exemption form. If not filed, then the Hearing Examiner must make findings of fact whether "special circumstances" exist to excuse the failure to file the exemption. The special circumstances are whether (1) the housing provider is not a landlord regularly, (2) the landlord was reasonably unaware of the requirement to file the claim of exemption and (3) the rent was reasonable.
27 D&O 158

If the housing provider files a claim of exemption form, the tenant has the opportunity to rebut it. In either case the claim of exemption must be accompanied with notice to the tenant that the unit is exempt from the Act. 27 D&O 158, 159

It would have been error for the Hearing Examiner to conclude that the housing accommodation was exempt just because the housing provider filed a claim of exemption. Hearing Examiner erred when he failed to take testimony and make a finding of fact as to whether the housing provider was exempt during the period of tenancy that was before the claim of exemption was filed. 27 D&O 16

It was error for Hearing Examiner to rule that units were exempt after ignoring the tenant's contest of the exemption during his tenancy due to lack of notice and the tenant's contest of the period when no claim of exemption was filed. 27 D&O 160-162

Failure to give a tenant notice that his unit is exempt renders exemption void *ab initio* because it violates the Act and the regulations. 27 D&O 162

The filing of incomplete registration forms or forms with mere technical violations (e.g., failure to sign or note customer service number) does not warrant a penalty.
27 D&O 182

Failure of the Rent Administrator to provide the housing provider with written notice of the defect(s) in registration form and 30 days to cure the defect(s) was reversible error.
27 D&O 183

A small landlord exemption form is not valid if all parties with a direct or indirect interest in the property has not signed the form. 27 D&O 183

Owner-occupied units are not counted in establishing the size of a housing accommodation, if the evidence presented proved the housing provider's occupancy was bona fide, and the owner-occupied unit did not fall within the definition of a rental unit under the Act. Accordingly, a housing provider who occupies a room in a rooming house

may claim an exemption so long as no more than 4 units in the accommodation are rented. 27 D&O 184

There is no question that a unit occupied by the owner is not "rented or offered for rent" but a unit occupied by a relative or friend may be different. 27 D&O 185

Services (communicating with tenant and collecting rent) were a benefit to housing provider within the meaning of the term "rent"; Thus, the "5th" unit is a unit that is "offered for rent and consequently" nonexcludible from the Act. 27 D&O 185

Failure to provide written notice of the exempt status to the tenant renders the exemption void *ab initio*; Thus, oral notice is insufficient. 27 D&O 186

Housing provider is required to register accommodation within 30 days from; the date one became the housing provider. 26 D&O 117

Although housing accommodation was not properly registered when the housing provider increased the tenant's rent, the tenant's challenge to the increase or rent adjustment is time barred since the tenant's challenge (filing of petition) was more than 3 years after the implementation of the adjustment. 26 D&O 118

Failure to obtain a certificate of occupancy constitutes failure to meet the registration requirements of the Act. 26 D&O 120

Certificate of occupancy and housing business licenses attached to the amended registration forms were defective since they were not issued to the owner of the property. 26 D&O 121

The certificate of occupancy issued for a 4-unit building was invalid because it was being used to support an amended registration form and housing business license reflecting five units. 26 D&O 121

When the housing provider filed the adjustment of general applicability the housing accommodation was not properly registered because there was no certificate of occupancy or housing business license issued to the owner of the property. 26 D&O 121

There was no record evidence that the housing provider perfected a legal adjustment in the tenant's rent ceiling because the housing accommodation was never registered in accordance with the Act. 26 D&O 121

The Act provides that the rent for a rental unit shall not be increased above the base rent unless the housing accommodations are registered in accordance with the Act and the housing provider is properly licensed under a statute or regulation. 26 D&O 121

Registration forms which are not accompanied by a valid certificate of occupancy should be rejected or invalidated. 26 D&O122

Act does not require annual filing of exemption form but only requires that an amendment be filed within 30 days of an enumerated list of events that change or substantially effect the housing accommodation. 26 D&O 123, 124

A failure to obtain a certificate of occupancy is deemed a failure to meet the registration requirement of the Act. 25 D&O 121

Hearing Examiner erred, as matter of law, in finding that the housing provider was registered where there was no registration form in the RACD registration files and the registration document was neither signed nor dated nor was it accompanied by a certificate of occupancy or housing business license. 25 D&O 122

The Hearing Examiner erred in distinguishing between the failure to register and defective registration. 25 D&O 122

Act requires housing provider to be licensed and the manager to be properly registered, if required by other laws; thus, Hearing Examiner must make findings of fact, conclusion of law and fine, if appropriate, after analysis on whether the housing providers violated the license and registration sections of the Act.
33 D&O 133, 134

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Housing Accommodation was not properly registered at time rent ceiling increases were implemented and charged the tenant, because Amended Registration Form was not filed to reflect the change in management from one company to another company. Thus, for this and other reasons, all rent ceiling and rent charged increases are denied. 38 D&O 67

RELOCATION ASSISTANCE

Hearing Examiner is reversed in the award of relocation assistance to the tenant because he had no jurisdiction to make the award. Section of Act referring to relocation assistance is not within the jurisdiction or statutory authority of the Rent Administrator but rather another Agency (DCHD) and therefore not within delegated authority of the Hearing Examiner. 26 D&O 70, 71

REMEDIES

The Act provides the remedies of refund or rollback of rent, when there is a rent overcharge, or reduction or elimination of services or facilities. The Act provides for fines for all other violations or failures to meet obligations under the Act, such as violations of the registration requirements (D.C. Code § 45-2591(b). 31 D&O 173

OAD, like RHC, does not possess the judicial powers, as the courts do, to formulate equitable remedies. 29 D&O 36, n.10

Under the Act, a rent ceiling adjustment is the only remedy that a tenant can receive for elimination or reduction of services and facilities; however, after the adjustment of the rent ceiling, a tenant may receive a rent rollback, if the rent charged exceeds the adjusted rent ceiling. 29 D&O 37, 38

RENT

Hearing Examiner has no jurisdiction under Act to adjudicate the amount of rent that is due and claims of unpaid rent. 25 D&O 123

Discussion of base rent in conjunction with challenge regarding related facilities.
33 D&O 161-163

"Rent" is the amount of money the housing provider changes the tenant. It may be lower than or equal to the rent ceiling but it cannot be higher than the rent ceiling.
37 D&O 64, 72

For interplay between "rent" and "rent ceiling" see regulations cited. 37 D&O 64, 65

RENT CEILING

For establishment of rent ceiling for each apartment unit See. 36 D&O 29

The housing provider's failure to file in accordance with 14 DCMR 4204.10 precluded him from maintaining rent adjustments in the years he did not file certificates of election within 30 days of the date he was first eligible to take the adjustment. 31 D&O 147

Act bars filing of claim and recovery of refund when facts relied upon occurred more than 3 years before filing of petition. 27 D&O 69

"Comparable unit" is normally found in context of rent ceiling adjustment for a vacant accommodation. 27 D&O 107

A tenant may challenge the vacancy adjustment if it was perfected based upon a comparable rental unit, which failed to meet the Act is criteria. 27 D&O 107

The Hearing Examiner having taken official notice of the RACD registration file for the housing accommodation, no additional hearing is required to determine the rent ceiling. 31 D&O 159

Total capital improvement costs are to be treated as a loan which is divided by 96 months and that figure is divided by the number of units in the housing accommodation to obtain the rent ceiling adjustment. 27 D&O 40, 41

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Rent ceiling increases were not properly perfected prior to implementation as an increase in rent charged the tenant. Thus, all rent ceilings and rent increases in specified issues are vacated. 38 D&O 67

There is no requirement under The Act that the housing provider identify the type of rent increase charged in the notice of rent or rent ceiling increase served on the tenant. However, when a tenant petition is filed challenging the increase, the housing provider must offer evidence that it was implementing a previously unimplemented rent ceiling adjustment. 38 D&O 69 and 70

No landlord of any rental unit subject to this subchapter may charge or collect rent for such rental unit in excess of the applicable rent ceiling. 38 D&O 70

Hearing Examiner is affirmed where he held housing provider's filing for the perfection of the applicable CPI-W rent ceiling adjustment was not authorized and was not properly served on the tenant. 38 D&O 70

Actions of housing provider did not comply with the Act and regulations that require perfection of the rent ceiling adjustments before they are preserved for implementation at a later time, because perfected rent ceiling adjustments do not expire. 38 D&O 72

Law and regulations generally relating to CPI-W increases and implementation of rent increases are set forth. 38 D&O 72-74

Under The Act, regulations and two Commission notices in D.C. Register (re Amended Certification and Notice of Rent Adjustment of general Applicability), the housing provider first became eligible on May 1, 1998 to perfect (as distinguished from implement) the 1.8% charge in the CPI-W. Pursuant to regulations, the housing provider had 30 days to perfect the CPI-W rent ceiling adjustment. Since, the housing provider did not properly perfect the 1.8% annual rent ceiling adjustment for 1998 within 30 days of first being eligible, it did not properly implement the 1.8% CPI-W increase in the tenant's rent in 1999. 38 D&O 75

The Commission first discussed the Unitary Rent Ceiling Adjustment Amendment Act of 1992 in Carter v. Davis, holding that the housing provider failed, as here, to perfect the rent ceiling increases by failure to file a Certificate of Election of Adjustment of General Applicability and failure to serve the tenant's proper notice of the rent ceiling adjustments. 38 D&O 75

Housing provider did not perfect 1.8% CPI-W rent ceiling increase until it filed the certificate of Election of Adjustment of General Applicability almost a year later which was beyond the 30-day period stated in the regulations to perfect the rent ceiling increase. Accordingly the rent ceiling increase was not authorized or illegal. 38 D&O 77

Act prohibits implementing automatic rent ceiling increases based on CPI-W if the housing accommodation is not properly registered. 38 D&O 77

Housing provider had 30 days after implementation of the vacancy rent ceiling increase to file the Amended Registration Form. 38 D&O 79

Where vacancy rent ceiling increase adjustment was disallowed for failure to timely file the Amended Registration form based on a vacancy, Commission properly set the rent ceilings of all rental units at the base rent level as the remedy. 38 D&O 80

It is settled law that a vacancy must exist before housing provider is eligible to perfect rent ceiling adjustment based on a vacancy and that notice of the vacancy rent adjustment must be filed on an Amended Registration Form in RACD within 30 days of the vacancy. 38 D&O 81

Perfecting vacancy rent ceiling is to be distinguished from implementing the increase in the rent ceiling by increasing the rent charged to the tenant. 38 D&O 81

Housing provider's attempt to implement vacancy adjustment after tenant rented the unit is rejected by the Court. 38 D&O 82

Certificate of Election of Adjustment of General Applicability must be filed within 30 days of the date the housing provider first became eligible for the adjustment. 38 D&O 83

By regulation, notice is to be given to the tenant prior to or simultaneously with the filing of the Certificate of Election of Adjustment of General Election of Adjustment of General Applicability. Thus, the Hearing Examiner's conclusion that the 1% rent ceiling adjustment was unperfected and the rent ceiling remained at $782 was the correct conclusion because it was based on the failure of the housing provider to properly perfect and serve the tenant with proper notice of the 1999 CPI-W adjustment. 38 D&O 83

Housing provider became first eligible for CPI-W rent increase adjustment on the effective date the Commission published the CPI-W rate of percentage increase. 38 D&O 83

If the Commission held that the housing provider could file a required amended registration form at any time, the effect would be to remove any effective enforcement sanction behind the requirement and eviscerate the meaning and force of the statutes and regulations. 38 D&O 85

Act and regulations allow perfected rent ceiling increase to be implemented at any time because it does not expire after it is perfected. 38 D&O 77

<u>Note:</u> See summaries under "REGISTRATION" and "RENT INCREASE".

RENT INCREASE

Fact that housing provider improperly increased does not result in a conversion of the rent to the rent ceiling. 37 D&O 65, 66

An increase in actual rent charged is never directly authorized only by the Act, but rather is authorized only by a prior concurrent rent ceiling increase properly taken under the Act. 37 D&O 66, 72

Rent ceiling adjustments, properly taken under the Act, shall be considered taken and perfected only if the housing provider has failed with the Rent Administrator a properly executed amended Registration/Claim of Exemption form. 37 D&O 66

When housing provider charged rent which exceeded rent ceiling, he violated the rent stabilization provisions of the Act. Thus, in accordance with penalty provisions of Act, refund is ordered which includes overcharges, trebled rent refund and interest. Additionally, a rent rollback is ordered until housing provider meets the registration requirements of the Act. 37 D&O 82-88

The rent ceiling, which is the chief mechanism for stabilizing rent in the District, is the officially recognized maximum allowable rent. 37 D&O 64

Act does not provide that tenant may only challenge rent increases not rent reductions "Rent adjustment" is any <u>increase</u> or <u>decrease</u> in rent required or permitted by the Act and its implementing regulations. 37 D&O 63, n.14

Act prohibits housing provider from implementing a rent adjustment if the housing accommodation is not properly registered when the increase is implemented.
37 D&O 62, 76

Utilization of unimplemented vacancy adjustment to increase. 34 D&O 90-94

Unitary Rent Increase Adjustment Act. 34 D&O 95-101

Vacant accommodation rent increase was taken properly. 33 D&O 38, 39

Rent increases in 12-month period. 33 D&O 39, 40

Housing provider's rent increase notice was defective because it did not, as required by the Act, contain a statement of current rent utilities covered by the rent, summary of. tenant's rights or list of sources of technical assistance published in the D.C. Register
32 D&O 67

Housing provider, contrary to the 180 day rule and other provisions of the Act sought to implement two CPI-W increases as well as a hardship petition increase in notice to tenant. 32 D&O 69

Housing provider violated Act when he failed to provide tenant with 30-day notice of rent increase, the date and authorization for the rent ceiling adjustments he attempted to implement. 32 D&O 69

Act (D.C. Code § 45-2518) provides that the rent for any rental unit shall not be increased above the basic rent unless the housing provider of the housing accommodation is properly licensed under a statute or regulation, if the statute or regulation requires licensing. 29 D&O 121

When the housing provider is first notified of a housing code violation after the rent increase went into effect, the rent increase is valid. 26 D&O 88, 89

In addition to imposing a rent refund for overcharges, treble damages are imposed. 26 D&O 139

In order to determine if a housing provider acted in bad faith and is consequently liable for treble damages, there must be a two-prong analysis. 26 D&O 140

The facts in this case warrant treble damages as the housing provider knowingly demanded excess rent and imposed late fees in contravention of the lease terms ,all showing a higher level of culpability. 26 D&O 141

The Hearing Examiner must use simple interest for interest calculations. 25 D&O 54

Hearing Examiner was correct in concluding that housing provider was not required to file rent increase forms with RACD since there was no rent increase. 25 D&O----

The Act places a time limitation on a tenant's right to recover as well as the right to a remedy. Thus, the statute of limitation places a limit on the Hearing Examiner's period of investigation of a rent adjustment. 25 D&O 126

Note: See summaries under "REGISTRATION" and "RENT".

RENT RECEIPTS

Regulations (14 DMCR § 306.1) require housing provider to provide tenant with receipt for rental payments. 28 D&O 286, 287

RENT REFUND

Calculation using fluctuating interest rates vs. use of single interest rate.
36 D&O 26-29

Refund amount. 35 D&O 31

DCRA requires findings of dates of tenant's occupancy at housing accommodation
35 D&O 32

Failure to provide evidence or refund. 35 D&O 33

Tenant in unit temporarily. 35 D&O 35

Good faith effort to increase rent ceiling. 35 D& O 33

Calculation of interest through date of final order. 34 D&O 113-115

Use of interest rates identical to Superior Court. 34 D&O 115-119

Nava method for calculation interest. 34 D&O 116

Maintenance of common areas. 33 D&O 46

Findings required by Hearing Examiner. 33 D&O 46

Rent refund (plus interest from date of violation) allowed where housing provider demanded and received rent from tenant in excess of maximum allowable rent and where the housing accommodation was not licensed. 28 D&O 302-306

RENT ROLLBACK

Rent rollback by Hearing Examiner was proper where housing provider improperly increased the tenant's rent (i.e., while the accommodations was unlicensed).
28 D&O 306, 307

REPRESENTATION

A tenant who did not appear at an OAD hearing may properly receive a rent refund, where the absent tenant was represented by another tenant at the housing accommodation. 27 D&O 73, 74

Tenant who no longer lives at housing accommodation could not represent the remaining tenants of the housing accommodation at the OAD hearing. 27 D&O 74

Regulations governing representation should be liberally construed. 27 D&O 74

Tenants who did not appear to testify at the OAD hearings may receive awards of damages where they had joined together with other tenants on the tenant petitions, agreed to one representative and had documentation admitted by official notice to support each tenant's claim. Compare, however, case which did not involve evidence admitted by official notice. Compare Lenkin where there was neither a tenant association nor a joining together of other tenant's as parties on the petition contesting the increased rents. 25 D&O 41, 43

RES JUDICATA/COLLATERAL ESTOPPEL

Determinations required for applications of. 33 D&O 99

Nature of and to what extent issues contained in OAD case were litigated and adjudicated in Superior Court case cannot be determined without evidence (e.g., Court transcript of trial testimony) being submitted thereon to OAD by housing provider. 33 D&O 100

Because housing provider did not attend OAD Hearing , it could not present evidence as to basic tenant of *res judicata* , which is whether a final judgment on the merits was rendered on the first case. 33 D&O 101

See case cited. 33 D&O 102

Hearing Examiner had authority to take official notice of another OAD decision for sole purpose of interposing defense of *res judicata*. 33 D&O 107

Opposing party must be given opportunity to object and present reasons why petition should not be dismissed on grounds of *res judicata*. 33 D&O 107, 108
0Doctrine of *res judicata* is an affirmative defense that housing provider has to plead.
. 33 D&O 237

To evaluate defense of *res judicata,* Hearing Examiner must have requisite exhibits and records involved in prior case. 33 D&O 237

Hearing Examiner must make three determinations to decide res judicata claim.
33 D&O 237, 238

Even where *res judicata* is applicable, collateral estoppel may bar relitigation.
33 D&O 238

Hearing Examiner erred in not giving tenant an opportunity to present evidence to show contrary of facts officially noticed. 33 D&O 238

The conditions necessary for invocation of the doctrine of res judicata and the effect of the doctrine are. 31 D&O 188

RETALIATION

Housing provider's "actual" knowledge not required. 37 D&O 116, 119

Hearing Examiner erred in not applying statutory presumption in favor of the tenant. Therefore, the burden was never shifted to the housing provider. 37 D&O 117

Hearing Examiner and RHC have jurisdiction to decide retaliation issue involving federally subsidized rental units. Furthermore, this authority extends to cases involving rental units otherwise excluded from the Act. The Act applies to all rental units except those which the Act creates special exemptions. 37 D&O 109-111

Law of "Presumption defined". 37 D&O 115

Court held that tenant presented evidence of acts that were presumptively retaliatory and housing provider produced no evidence to rebut the presumption. 37 D&O 92, n.37

Court affirms $1,000.00 fine for retaliation. 37 D&O 92, n.37

Hearing Examiner's findings of no retaliation is upheld. 37 D&O 104

Law of . 34 D&O 136

Failure to repair or replace defective oven. 34 D&O 142-143

Sloppy and inferior repair of kitchen floor tile. 34 D&O 143-145

Repair of walls or ceilings with contrasting paint. 34 D&O 145-146

Change of storeroom locks. 34 D&O 146-147

Violation of tenant's privacy by maintenance men entering without prior notice.
34 D&O 147-149

Act does not provide for decrease in rent ceiling where retaliation is found but rather provides for imposition of a civil fine. 33 D&O 78

OAD (vs. the court) does not have exclusive jurisdiction to try retaliation claim.
33 D&O 120-121

Act's presumption retaliation is not automatic; tenant must first demonstrate he exercised a right, which triggered the presumption within 6 months of the housing provider's action. 33 D&O 121, 122

Relevant retaliation provisions of Act cited. 33 D&O 121

Regarding issue of retaliation, Act requires "clear and convincing evidence" as standard to overcome the presumption of retaliation and not the "substantial evidence" standard. 33 D&O 185

Act requires judgment to be entered in tenant's favor on issue of retaliation unless housing provider comes forward with clear and convincing evidence to rebut the presumption. 33 D&O 184

Hearing Examiner must state if tenant requested repairs and when housing provide performed any acts that could be retaliatory (i.e., issued notice of eviction).
33 D&O 186

If a tenant alleges act which fall under the retaliatory eviction statute, the statute by definition applies, and the landlord is presumed to have taken an action not otherwise permitted by law unless it can meet its burden under the statute. 28 D&O 310

The statute requires the housing provider to present clear and convincing evidence to overcome the presumption of retaliation. 28 D&O 310

RHC found housing provider can forward with clear and convincing evidence to rebut presumption of retaliation by presenting oral and documentary evidence. 28 D&O 312

The housing provider produced both testimony and documents which served as clear and convincing evidence to rebut the presumption of retaliation. 28 D&O 313

The Hearing Examiner was correct in concluding that the tenant failed to adduce sufficient facts to raise the presumption of retaliation. 27 D&O 188

There is statutory presumption that an adverse action by the housing provider against the tenant is retaliatory if it occurred within 6 months after the tenant complained about the housing code violation; if the presumption exists, the housing provider has to present clear and convincing evidence that his actions were not retaliatory. 26 D& O 90

The retaliatory provisions of the Act are only applicable where a housing provider takes an action not otherwise permitted by law. 26 D&O 90 n.2

Substantial evidence supports Hearing Examiner's decision that housing provider filing of suit in D.C. Superior Court exclusively for nonpayment of rent when tenant owed rent was not prompted by retaliation as testified by the tenant. 26 D&O 91

To clarify, if a tenant alleges acts which fall under the retaliatory eviction statute (D.C. Code § 45-2552) the statute by definition applies and the landlord is presumed to have taken action not otherwise permitted by law, unless it can meet its burden under the statute. 26 D&O 148

As proof of her retaliation claim, the tenant introduced testimonial and documentary evidence. Additionally, the tenant presented evidence that the housing provider's actions were taken less than 6 months after she, among other things, made an effort to enforce her rights. Consequently the retaliation statute applied, by definition, and there was a presumption of retaliation that could only be defeated by clear and convincing evidence. 26 D&O 149

The housing provider came forward with clear and convincing evidence to rebut the presumption of evidence by presenting oral and documentary evidence (citing TP 21, 253). 26 D&O 150

The housing provider's statements that he did not engage in retaliatory conduct were insufficient to sustain his burden of proof since he offered no supporting documentary evidence during the OAD hearing. 26 D&O 150

The record in the OAD hearing is replete with evidence of retaliation. 26 D&O 151

The housing provider did not rebut the evidence concerning the late fees or the action for possession. 26 D&O 151

The housing provider failed to meet his burden of proof because he did not offer clear and convincing evidence that his actions were not retaliatory in nature. 26 D&O 151

The RHC imposes a $1000.00 fine for violation of the retaliation statute. This figure is based on the vast number of retaliatory acts found in the record. 26 D&O 151

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Award of retaliation fine directly to tenants was error and tenants are not entitled to fines as a remedy for retaliation. 38 D&O 120

SECURITY DEPOSIT

Regulations provide that security deposit cannot exceed first full month's rent charged tenant and shall be only charged once by the housing provider. 32 D&O 71

SERVICE

Tenant has burden of supplying the parties correct addresses. 27 D&O 55

When counsel represents a party, service must be made on the party's counsel. 27 D&O 55

SETTLEMENT

Settlement of litigation is to be encouraged. 29 D&O 159

The DCCA required in Proctor that consideration be given to certain elements in deciding whether agency will accept settlement. 29 D&O 159

The Commission after its review and for the reasons detailed, approves the settlement agreements. 29 D&O 160, 161

No settlement terms disposing of issues in petition. 35 D&O 90, 91, 92

Incorporation in dismissal order. 35 D&O 90, 91

Elements to consider: (1) the extent to which it enjoys support among the affected tenants, (2) its potential for finally resolving the dispute, (3) the fairness of the proposal to all affected persons, (4) the saving of litigation costs to the parties; and (5) the complexity of law and the delays inherent in the administrative and judicial process. 34 D&O 43

Settlement agreement not voluntary agreement under Act. 34 D&O 44

Statement in settlement agreement that it was entered into voluntarily is not required. 34 D&O 45

RHC looks favorably upon settlement agreements executed with assistance of legal counsel. 34 D&O 46

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Decision of Hearing Examiner accepting settlement agreement is flawed and therefore reversible error because he failed to make findings of fact as required by Proctor. 39 D&O 61

STATUTE OF LIMITATIONS

Tenant (under the Act) must file any challenge to any type of rent adjustment within 3 years after the adjustment takes effect. 37 D&O 55, 57, 73, 74, and 76-82

Filing of petition 3 years after rent adjustment or alleged violation of Act by housing provider. 36 D&O 35

As applied to reduction in services and facilities claims. 36 D&O 35, n.5

Removal of roof deck. 36 D&O 36-39

Three-year limitation to challenge rent adjustment. 33 D&O 53, 54

Facts occurring three years before filing of petition cannot be relied upon for rent refunds. 33 D&O 54

Hearing Examiner is precluded by Act from relying upon evidence of rent levels in effect more than three years before tenant filed petition. 33 D&O 54

Statute of limitation provision in Act prevents ordering housing provider to adjust ceilings for reductions of services and facilities that occurred in excess of 3 years before petition was filed. 29 D&O 38, 45

The Rent Administrator approved the ceilings in the voluntary agreement in 1990; this since the petition was filed in 1995, it was filed more than a year beyond the Act's 3-year statute of limitations. 29 D&O 45

The statute of limitation bars any investigation of the validity of either rent levels or rent ceilings implemented more than 3 years prior to the date of the tenant petition.
29 D&O 45

Issue of whether rent increases were taken in accordance with voluntary agreement cannot be decided since the alleged increases are barred by the 3-7 year statute of limitations. 29 D&O 46

Statute of limitations bar issues concerning rent adjustments that arose under voluntary agreement that was executed more than 3 years before the filing of the petition.
27 D&O 22, 23

The statute of limitations extinguished claims arising under voluntary agreement executed five years prior to filing of petition. 27 D&O 22

If housing provider had not met his obligations under voluntary agreement, the Hearing Examiner was without authority to make any adjustments in rent arrangements, since the

statute of limitations bars any investigation of the validity of rent levels or of rent adjustments in either rent levels or rent ceilings implemented more than 3 years prior to the date of filing of the tenant's petition. 27 D&O 21

Hearing Examiner's statement that voluntary agreement stands in place of certificate of implementation (certificate of Election of Adjustment of General Applicability) is contrary to the Agency's rules and therefore error since a voluntary agreement does not relieve a housing provider of his obligation to comply with the Act. 27 D&O 22, 23

The statute of limitations bars claim of elimination of resident manager's position since the position was eliminated more than 3 years prior to the filing of the petition.
27 D&O 28

The statute of limitations is an absolute bar to filing a claim and recovery of a refund for reduction in services when the reduced services began or facts relied upon occurred more than 3 years prior to the filing of the petition. 27 D&O 28

Evidence supported Hearing Examiner's findings that housing provider reduced tenants' services and facilities when he closed 1st floor office. 27 D&O 29

There was not reduction of services concerning trash bin or resident manager since another employee performed duties of the manager. 27 D&O 29

Hearing Examiner assessment of a $5.00 reduction in rent for loss of 1st floor office was arbitrary since the he failed to justify or explain how the amount was determined.
27 D&O 29, but see 29, n.6

Act bars filing of claim and recovery of refund when facts relied upon occurred more than 3 years before filing of petition. 27 D&O 69

The Act places a time limitation on a tenant's right to recover as well as the right to a remedy. Thus , the statute of limitation places a limit on the Hearing Examiner's period of investigation of a rent adjustment. 25 D&O 126

The statute of limitations is an absolute bar to filing a claim and recovery of a refund for reduction in services when the reduced services began or facts relied upon occurred more than 3 years prior to the filing of the petition. 27 D&O 28

SUBPOENA

Subpoena on party represented by counsel not properly served where personal service requirement has not been met. 33 D&O 113-118

Hearing Examiner did not abuse his discretion when he denied the tenant's request to compel the Chief of the Condominium and Cooperative Conversion and Sales Branch to appear at the OAD hearing for the reason that the Rental Housing and Conversion Sale Act is not embodied in the Rental Housing Act of 1985. 26 D&O 123

TENANT

Maintenance men or resident manager who received rent free apartment as partial compensation for their services did not occupy the rental unit within the meaning of the Act. 25 D&O 111

Employees of owners of apartment were servants not tenants; thus, the employees were not afforded the protection under the Act. 25 D&O 111

Since resident manager was not a tenant, no vacancy existed in unit he occupied for purposes of vacancy increase provisions of Act (D.C. Code § 45-2523)
25 D&O 111, 112

VOLUNTARY AGREEMENTS

Under the Act, a rent ceiling adjustment is the only remedy that a tenant can receive for elimination or reduction of services and facilities, however, after the adjustment of the rent ceiling, a tenant may receive a rent rollback if the rent charged exceeds the adjusted rent ceiling. 29 D&O 37, 38

Statute of limitation provision in Act prevents ordering housing provider to adjust ceilings for reductions of services and facilities that occurred in excess of 3 years before petition was filed. 29 D&O 38, 45

The Rent Administrator approved the ceilings in the voluntary agreement in 1990; thus since the petition was filed in 1995, it was filed more than a year beyond the Act's is 3-year statute of limitations. 29 D&O 45

The statute of limitation bars any investigation of the validity of either rent levels or rent ceilings implemented more than 3 years prior to the date of the tenant petition.
29 D&O 45

Issue of whether rent increases were taken in accordance with voluntary agreement cannot be divided since the 3-year statute of limitations bars the alleged increases.
29 D&O 46

A "voluntary agreement" is a contract with two condition precedents (1) approval by 70% of tenants (2) approval of Rent Administrator. 27 D&O 20, n.4

A voluntary agreement will not be disturbed, absent existence of improprieties, such as fraud duress, misrepresentation or coercion during the formation stage of agreement.
27 D&O 20

Rent Administrator does not have power to reform voluntary agreement that has already been implemented. 27 D&O 21

Statute of limitations bar issues concerning rent adjustments that arose under voluntary agreement that was executed more than 3 years before the filing of the petition.
27 D&O 22, 23

The statute of limitations extinguished claims arising under voluntary agreement executed five years prior to filing of petition. 27 D&O 22

If housing provider had not met his obligations under voluntary agreement, the Hearing Examiner was without authority to make any adjustments in rent arrangements, since the statute of limitations bars any investigation of the validity of rent levels or of rent adjustments in either rent levels or rent ceilings implemented more than 3 years prior to the date of filing of the tenant's petition. 27 D&O 21

Hearing Examiner's statement that voluntary agreement stands in place of certificate of implementation (certificate of Election of Adjustment of General Applicability) is contrary to the Agency's rules and therefore error since a voluntary agreement does not relieve a housing provider of his obligation to comply with the Act. 27 D&O 22, 23

When registration file and record do not contain approved voluntary agreement, any increases taken pursuant to the agreement are invalid. 27 D&O 72

Official notice of a voluntary agreement may be taken. 27 D&O 72, n.6

The Act (D.C. Code § 45-2525(a) authorizes housing providers and tenants to enter into voluntary agreements. 27 D&O 71